



Fwd: Questions please?

FOIA Exemption (b) (6)

to:

Cheryl Burdett

06/28/2010 04:44 PM

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From: FOIA Exemption (b) (6)

To: Cheryl Burdett/R5/USEPA/US@EPA,

1 Attachment



dispute resolution (2).pdf

----- Forwarded message -----

From: **Zacharda, Nicole (DNRE)** <ZACHARDAN@michigan.gov>

Date: Fri, Jun 25, 2010 at 12:26 PM

Subject: RE: Questions please?

To: FOIA Exemption (b) (6)

Cc: "Creal, William (DNRE)" <CREALW@michigan.gov>, "Merricle, Greg (DNRE)" <MERRICLEG@michigan.gov>, "Matthews, Rachel (DNRE)" <MATTHEWSR@michigan.gov>, "Hoffman, Alan (AG)" <HoffmanA1@michigan.gov>, "Ostlund, Peter (DNRE)" <OSTLUNDP@michigan.gov>

Hi Lynn,

I understand you phoned with some news for us... Bill has been busy in meetings all morning. I had held off on answering your questions in the hope that I'd have a bit more information to share this week. I've attached a stipulated settlement of the dispute resolution (unpaid penalties & financial assurance). This was effective earlier this week and if you are correct about an impending bankruptcy filing, Vreba-Hoff's willingness to sign makes sense. The DNRE has also asked the Attorney General's office to amend the December 2009 complaint to include effluent violations for 2010 and the unauthorized use of the Packard Road pit. Amending a complaint has some procedural steps that take a bit of time. I will let you know of course when it has been filed with the Court.

Now for your questions... some I can answer, others are best left to field staff.

1. I'm afraid imminent threats are tricky to define. Generally the 'harm prong' of the 4-prong standard we need to meet to get something like a temporary restraining order is that the damage to the environment must be clearly irreparable. For a discharge to surface waters for example, we would likely seek an order when a discharge is occurring and the liable party refuses to cease the behavior, despite documented resource impacts (like a fish kill or clear exceedance of a water quality-based standard). Vreba-Hoff gets tricky because their irrigation of effluent constitutes a discharge to the ground. Yes, they are far in excess of the permit limitations, but absent evidence that groundwater is indeed being impacted in a manner that potentially affects human health (i.e. proof of irreparable harm)... obtaining extreme relief like the restraining order is a long-shot. Another potential example of imminent harm would be breach of a manure

lagoon... which leads me to your second question.

2. I did share your note with district staff and we are not aware of a bulldozer being used in a manner that would jeopardize the integrity of storage structures at Vreba-Hoff II (or VHI for that matter). I've cc'd Rachel & Greg on this note in the event they know of something else going on, but generally it wouldn't be alarming for an operation to use heavy equipment to relocate feed, turn compost, or clean out various structures. If you look at NRCS 313, you can see that thought is given to the use of heavy equipment when designing a structure by the inclusion of ramps for the purpose of removing accumulated solids.

3. While a seeded crop is not explicitly defined in the Interim Order, we consider fields eligible for irrigation of treated effluent to be either an intentionally-planted crop (like wheat as you mention in your example) or a perennial such as alfalfa. Volunteer weed growth or leftover seed/residue is not a seeded field. We have heard that VH did not have funds for seed until perhaps very recently and agree that many fields have not been planted. This has limited where they've irrigated effluent thus far. We are also aware that Charlie Schaffner may have broken off relations with Vreba-Hoff which modifies their available land base. It has been my understanding that the pivots are located on VH-owned land, leaving the Schaffner acreage in reserve for slurry & solids.

4. We also understand that Vreba-Hoff has not been paying their taxes, but that has no bearing on the DNRE's regulatory oversight of the dairies.

I hope that I've answered your questions Lynn. I will let you know once I have additional information on our request to amend the complaint.

Nicole

Nicole M. Zacharda, Enforcement Specialist

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Water Bureau

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From: tigerpaw [tds.net](mailto:tigerpaw@tds.net) [mailto:tigerpaw@tds.net]

Sent: Tuesday, June 22, 2010 3:37 PM

To: Zacharda, Nicole (DNRE)

Subject: Questions please?

Nicole,

At what point does Vreba Hoff become an eminent danger???

Last week the neighbor said they were using a bulldozer at the lagoons of Vreba Hoff II?

What is considered a seeded crop??? Is dropped wheat from a harvested wheat crop considered seeding below travel irrigators????

Many of the fields have not been planted to a crop for this year???

The large farmer that was leasing to Vreba Hoff has told that he is not working with them any more???? Has DNRE verified the lands in the CNMP? These properties would be with Charles Schaffner, Schaffner Farms, Schaffner Limited Partnership, etc.??? He has not had waste application last year or this year???

Vreba Hoff has 46 properties with Certificates of Forfeiture, with back taxes exceeding \$670,000.00.

May I please get an update?

Thank you,

--

Lynn Henning, CAFO Water Sentinel

2010 Goldman Environmental Prize
Sierra Club Michigan Chapter
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Support Sierra Club Michigan Chapter! Go to <http://tiny.cc/MISierraClubSupport> to make your donation!

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